Supreme Court, U.S.
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No. ___ (1)

IN THE

Supreme Court of the United States

MIKAIL KHASHAN,
Petitioner,

v.

NINTH CIRCUIT COURT OF APPEALS,
Respondent.

On the petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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April 28, 2004

QUESTIONS PRESENTED FOR REVIEW

1. May federal appellate judges determine the merits of an appeal, and dismiss it, without appeal briefs being filed?
2. Has the United States Supreme Court so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the Ninth Circuit Court of Appeals, as to call for an exercise of this Court's supervisory power?
3. Did the Ninth Circuit Court of Appeals abuse its discretion dismissing petitioner appeal?
4. Has the Ninth Circuit Court of Appeals, in its actions, including a pattern of Civil Rights Violations, particularly Violation of Due Process of Law, acted improperly and abused its discretionary power, and with a lack of appropriate judicial clarity in improperly dismissing petitioner appeal so as to prejudice petitioner in his rights, or in his pursuit of justice?
5. Can Ninth Circuit Appeals Court demonstrate lack of jurisdiction over a well pleaded appeal resulted from a Final Order of District Court?
6. Has the Ninth Circuit Appeals Court, through its deliberate failure to consider appropriate and correct law and fact which were called to the court's attention, improperly dismissed the action of petitioner?
7. In its dismissal of the petitioner appeal, has the District Court violated petitioner rights, in fact:
    a.) under the First Amendment to petition the courts for redress of grievances?;
    b.) under the Fifth and Fourteenth Amendments to equal protection of the laws?;
    c.) under the Seventh Amendment to a trial by jury?

8. Can the defendant remove state action to federal jurisdiction when a plaintiff by a voluntary act interposes a federal question that did not appear in the complaint as originally filed?

9. Can federal judges remand an action to state court that is transferred by petitioner to federal jurisdiction based on counterclaim that states multiple federal causes of actions for which federal remedies are available?

    i. Violation of 18 U.S.C. 1692 RICO ACT;

    ii. Violation of 42 U.S.C. 1983;

    iii. Violation of 15 U.S.C. 1692;

    iv. Violation of 15 U.S.C. 1601;

    v. Violation of 11 U.S.C. 727;

    vi. Defamation;

    vii. Solicitation of Perjury;

    viii. Fraud.

10. Can federal court determine its own jurisdiction even if a party objects where there is counterclaim that states multiple federal causes of actions for which federal remedies are available?

PARTIES TO THE PROCEEDINGS

The parties to the questions presented here are the District Court of California, Central District; Ninth Circuit Court of Appeal; and the plaintiff, WFS Financial Services, Inc.

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CITATIONS OF DISTRICT COURT AND APPELLATE COURT DECISIONS

Ninth Circuit Court of Appeal in its order dated February 24, 2004 states as follows:

> Before: FERNANDEZ, W. FLETCHER and TALLMAN, *Circuit Judges*
>
> A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal court is not reviewable. *See* 28 U.S.C. §1447 (d); *Kunzi v. Pan American World Airway, Inc.*, 833 F.2d 1291 (9th Cir. 1987)(order remanding for lack of federal jurisdiction is not reviewable).

Consequently, this appeal is dismissed for lack of jurisdiction.

JURISDICTIONAL STATEMENT

- This petition seeks review of the order dated February 24, 2004, and March 30, 2004, by the Ninth Circuit court of appeals that deprived Petitioner the due process right to file appeal briefs relating to the transfer of state action to federal jurisdiction under the Civil Rights Act, Bivens, Civil RICO.
- The refusal to address the multiple federal causes of actions under the RICO ACT, Truth and Lending Acts, and Federal Bankruptcy Laws.
- The appeal was of a final order for which the appellate court had mandatory jurisdiction under 28 U.S.C. §§ 1291.
- The jurisdiction of the district court for the multiple federal causes of actions for which relief was available arose under 28 U.S.C. §§ 1331 and 1343 in conjunction with the Civil Rights Act (42 U.S.C. §§ 1983-1986), Bivens, and RICO (42 U.S.C. §§ 1961-1965), Truth and Lending Acts of 15 U.S.C. §§ 1601 and 1692, and Bankruptcy Relief pursuant to 11 U.S.C. § 727.

This petition is timely: The district court entered its final order remanding case to the superior court of California on December 5, 2003, (See Appendix). Thereafter, district court denied petitioner's reconsideration on December 18, 2003, (*See* Appendix).

Furthermore, petitioner filed his Notice of Appeal with Ninth Circuit Court of Appeal on December 24, 2003. Shortly after, Ninth Circuit Appeal Court denied petitioner's appeal on February 24, 2004, (*See* appendix). Moreover, petitioner filed for reconsideration with Ninth Circuit on March 7, 2004, which was denied on March 30, 2004, (*See* Appendix).

Constitutional Provisions and Statutes Involved In the Case

First Amendment Right to petition the government for a redress of grievances.

Fifth Amendment Due process, equal protection, rights and privileges, property rights, the right not to be deprived of life, liberty, or property, without due process of law.

Fourteenth Amendment Due process, equal protection, and property rights.

Article V of the Bill of Rights Not to be deprived of life, liberty, or property, without due process of law.

Title 28 U.S.C. § 1331 The responsibility of federal judges to exercise jurisdiction and provide judicial remedy via actions arising under the Constitution and laws of the United States, giving all citizens the right to petitioner government for redress against great harm.

Title 28 U.S.C. § 1343 The due process right to recover damages for injury to person and property arising out of deprivation of massive numbers of substantive and procedural due process violations in conjunction with the Civil Rights Act and other law and constitutional rights stated in this petition.

28 U.S.C.A. § 1443 Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.

Title 42 U.S.C.§§ 1961~1265, RICO The right to obtain financial damages against those defendants engaging in a conspiracy, affecting interstate and international commerce, through multiple predicate acts.

Title 42 U.S.C. §§ 1983-1988 The right to obtain an injunction halting continuing major violations of civil and

constitutional substantive and procedural violations occurring in state courts, and for financial damages.

Bivens doctrine The right to obtain an injunction halting continuing major violations of civil and constitutional substantive and procedural violations occurring in federal courts, and for financial damages.

CA ST JUDICIAL ETHICS Canon 1 An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

CA ST JUDICIAL ETHICS Canon 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.1 (a)

A judge shall be disqualified if any one or more of the following is true: (6) For any reason; (c) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.3

(b)(2) There shall be no waiver of disqualification where the basis therefore is either of the following:

(A) The judge has a bias or prejudice concerning a party. (c)(l) If a judge who should disqualify himself or herself refuses or fails to do so, *any party* may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the

grounds for disqualification of the judge. The statement shall be presented at *the earliest practicable opportunity*

STATEMENT OF THE CASE

Supreme Court Rule 62A requires judges to conduct themselves "at all times in a manner that promotes public confidence in the integrity *and impartiality* of the judiciary."

The United States Supreme Court has also held that "[a] fair trial is a basic requirement of the due process"[1] Central to the concept of a fair trial is the principal that a judge shall apply the law impartially. Common law has recognized the importance of a judge's impartiality at least since the time of Sir Edward Coke, as reflected in the maxim that "no man shall be a judge in his own case,"[2] Since then, a body of law has developed to govern the standards and procedures by which a judge is to be disqualified from cases in which he has an interest or bias.[3]

Chronology leading to transfer action to federal court:

1. Defendant filed for Chapter 7, Bankruptcy, on March 22, 2001. In his petition, defendant named plaintiff, WFS Financial Services, Inc. ("plaintiff" or "WFS" as his creditor.

2. Plaintiff's claim alleges that Khashan for valuable consideration, made, executed and delivered to JIM

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[1] *In re Murchison*, 349 U.S. 133, 136 (1955); *see also Wong Yang Sung v. McGarth*, 339 U.S. 33, 50 (1950) (Constitution requires that hearings take place before an impartial tribunal); *Tumey v. Ohio*, 273 U.S. 510, 512 1926)("A trial before a tribunal financially interested in the decision constitutes a denial of due process. . .)

[2] "(A)liquis non debit case Judex in properia cause. . .:Dr. Bonham's Case, 77 Eng.Rep. 646, 652 (1609).

[3] For an examination of the development of judicial disqualification law, *see* Frank, Disqualification of Judges, 56 YALE L.J. 605, 609-26 (1947).

ALLEN MOTORS a written Motor Vehicle Contract and Security Agreement. Plaintiff claims that the defendant defaulted in the terms, conditions and covenant of the Contract by failing and refusing to make the monthly payment then due and owing.

3. On July 15, 2000, petitioner purchased a 1998 BMW 740IL, from EURO AMERICA MOTORS ("EURO"), not Jim Allen Motors as defendant contends.

4. At the time petitioner signed the agreement with EURO, he agreed to purchase the vehicle for the cash value of $34,500.00. KHASHAN then gave $6,000.00 down payment to EURO. Furthermore, petitioner agreed to make a monthly payment of $796.88 for the terms of 48 months or four (4) years.

5. Plaintiff and its agents without knowledge and consent of defendant had altered the terms of the agreement to bear a lower monthly payment of $756.88 but for a longer period of 60 month or five (5) years. A difference of $7,202.56 which defendant would have suffered for the benefit of the plaintiff, WFS Financial Services, Inc.

6. Thereafter, plaintiff attempted to serve defendant with a copy of the summons and complaint. The services of the complaint was defective and not in compliance with California Civil Procedure §416.60 through §416.90.

7. Plaintiff's process server, Delbert Salgado ("Salgado"), on April 30, 2002, prepared and filed with the state court a declaration of service of summons, under penalty of perjury stating the he had served defendant's spouse at her resident.

8. The fact is that plaintiff's process server had spoken to defendant's *sister*, Linda Khashan, ("Linda") and he never identified himself to be a process server who was on an official business attempting to serve a summons and complaint on defendant. Defendant's sister found the demeanor and behavior of the unknown individual to be peculiar and nervous and informed the individual she would contact the police if he did not leave the premises. Shortly thereafter, when Linda departed her house, she discovered a summons and complaint on the front porch of her house. It is not known that the summons was left on the front porch by the estranged individual or by someone else.

9. Defendant timely filed a Motion to Quash Service of Summons on May 13, 2002. Defendant attached all supporting documents including Linda's affidavit deposing to the entire conversation she had with estranged individual.

10. Plaintiff's process server with the assistance of plaintiff's attorneys upon learning of the fact in the case by reading defendant's Motion to Quash Service of Summons, coached the process server by soliciting perjury to sign a second affidavit of service in contradiction of his first affidavit to include that he had conversation with defendant's *sister* and that he had personally hand delivered a copy of summons and complaint to petitioner's sister. This act of process server was an intent to deceit and mislead the court and defendant and for the benefit of the plaintiff and its attorneys.

11. On June 13, 2002, the hearing came before Judge Alan G. Buckner who agreed with defendant that the conducts of process server, Salgado, was not honest and his affidavit of service filed with the court

was false and fabricated, but denied the motion without legal justification, on bad cause, and on bogus grounds.

12. Defendant timely filed a Notice of Appeal with the Appellate Court, Second District, on June 21, 2002.

13. Appellate Court requires that appellant to file a Case Information Statement upon filing an appeal. Case Information Statement requires appellant to accompany a copy of the order appealing that is signed by the judge issuing the order.

14. Defendant, on July 31, 2002, requested the lower court in writing for a signed order denying his motion to quash service of summons in an effort to complete his Case Information Statement.

15. Judge Alan G. Buckner, in an attempt to prevent the defendant from having his day before the appellate court, in retaliation and abuse of his authority refused to sign an order justifying his own ruling denying defendant's motion to quash service of summons.

16. Defendant's appeal was dismissed by Second Appellate Court for failure to file a completed Case Information Statement on July 31, 2002.

17. Thereafter, defendant timely filed a Motion for an Order for Change of Venue on July 12, 2002. The hearing was scheduled by the clerk of the court for September 12, 2002, pursuant to California Rules of Court, *Rule 2.0(e)* which states all Venue hearings must be scheduled in Department 1, of Central District.

18. Judge Alan G. Buckner in an attempt to retaliate and to intimidate defendant and in violation of *California Rules of Court, Rule 2.0(e)* ordered the petitioner to

reschedule the hearing for September 5, 2002, to be heard in his courtroom.

19. Defendant filed Notice of Continuance of Hearing in compliance with the court order, on August 1, 2002.

20. Since defendant had doubt in the integrity and impartiality of the lower court's corrupt motives and intentions, on July 27, 2002, pursuant to California Rules of Court, Rule 303, defendant timely and appropriately withdrew his previously Motion for an Order for change of Venue, and replaced it with a Motion for an Order to Transfer Action from Central District, where judge Alan G. Buckner was presiding to San Fernando District where defendant resided; another polite and courteous way to inform judge Alan G. Buckner to stop his personal vendetta against the defendant.

21. Defendant as is today was also representing himself on all state proceedings. Having observed dishonesty and ingenuity in the dignity and honor of the court and its scandalous officers (attorneys for plaintiff) to protect himself from any surprises, on July 27, 2002, petitioner mailed a letter to plaintiff's attorneys demanding that all future communication with defendant must be in writing. There was no hearing scheduled for this demand.

22. On September 7, 2002, defendant received a Notice of Ruling, regarding previously withdrawn and off calendared Motion for an Order for Change of Venue. Alan G. Buckner without notifying the appellant had continued previously withdrawn motion and denied it in the absence of the defendant without having jurisdiction. On the same day, Alan G. Buckner additionally issued another ruling in a matter that was neither scheduled for hearing nor judicially noticed.

The ruling states that defendant's Demand for Communications in Writing is also denied.

23. On September 10, 2002, defendant filed a demand for court to vacate its bias, prejudicial, discriminatory and illegal rulings on subjects that court had no authority to rule on in the absence of the defendant.

24. Defendant making every effort to have his case heard before an impartial and dignified judge other than Alan G. Buckner, having become frustrated of judge's retaliatory techniques, and abuse of his authority, filed a declaration of prejudice pursuant to *California Civil Procedure §170.6,* on September 10, 2002.

25. Concurrently, defendant filed a Demand for Hearing for Disqualification of Judge Alan G. Buckner in accordance with *California Civil procedure* §170.3(4)(c)(1).

26. On or about September 29, 2002, defendant received three (3) orders signed by Judge Alan G. Buckner striking defendant's every motion that was filed in violation of judge's judicial performance. Judge refusing to recuse himself, striking every motion he has no judicial authority to strike! What a mockery of the American Justice System!

27. Defendant having exhausted every available option to get his day in a fair state court after being denied his constitutional rights to due process of law, having been violated by the lower court, by plaintiff and its scandalous attorneys and their process server, transferred the state action to federal jurisdiction on October 7, 2002.

28. The district court on December 6, 2002 in its order granting plaintiff's motion to remand.

29. On December 13, 2002, defendant filed his appeal to the Ninth Circuit which was denied.

30. Defendant subsequently prepared his counterclaim and filed it with the district court, on December 3, 2003.

31. On December 5, 2003, only two days after the filing of his transfer and counterclaim district court on its own motion denied defendant's access to the justice system and remanded action to state court. District court citing: *Rains v. Criterion Systems, Inc.*, 80 F.3d 339 (9th Cir. 1996), claims that *"A federal court must determine its own jurisdiction even if neither party objects to it."*

32. On December 18, 2003, petitioner's request for reconsideration was denied by district court.

33. On December 24, 2003, petitioner filed his appeal to the ninth circuit court. Only two days prior to filing petitioner's opening brief, ninth circuit dismissed petitioner's appeal citing *"A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not reviewable. See* 28 U.S.C. §1447(d); *Kunzi v. Pan American World Airway, Inc.*, 833 F.2d 1291 (9th Cir. 1987)*(order remanding for lack of federal jurisdiction is not reviewable). Consequently, this appeal is dismissed for lack of jurisdiction".*

34. On March 30, 2004, ninth circuit denied petitioner's request for reconsideration.

Now petitioner looks into this court for some justice in pursuit of rightfulness in American legal system!

42 USCA § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the

District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. Conduct by persons acting under color of state law which is wrongful under § 1983 cannot be immunized by state law. *Hodgson v. Mississippi Dept. of Corrections*, E.D.Wis.1997, 963 F.Supp. 776. Federal civil rights statute was designed to deter state actors from using their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if deterrence failed. *Bosley v. Kearney R-1 School Dist.*, W.D.Mo.1995, 904 F.Supp. 1006, affirmed 140 F.3d 776, rehearing and suggestion for rehearing en banc denied. Whether certain conduct is "under color of state law" or "state action," for purposes of § 1983 and Fourteenth Amendment, is a question of federal, not state law. *Gorenc v. Salt River Project Agr. Imp. and Power Dist.*, C.A.9 (Ariz.) 1989, 869 F.2d 503, certiorari denied 110 S.Ct. 256, 493 U.S. 899, 107 L.Ed.2d 205. Doctrine of judicial immunity does not shield judge from injunctive relief in civil rights suit under § 1983. *Holeman v. Elliott*, S.D.Tex.1990, 732 F.Supp. 726, affirmed 927 F.2d 601, certiorari denied 112 S.Ct. 59, 502 U.S. 812, 116 L.Ed.2d 35. Purpose of § 1983 is to deter state actors from using badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Wyatt v. Cole*, U.S.Miss.1992, 112 S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d

504, on remand 994 F.2d 1113; *Reuben H. Donnelley Corp. v. Brauer, Ill.App.* 1 Dist.1995, 655 N.E.2d 1162, 211 Ill.Dec. 779, 275 Ill.App.3d 300. Deterrence of future abuses of power by persons acting under color of state law is an important purpose of this section. *City of Newport v. Fact Concerts, Inc.*, U.S.R.I.1981, 101 S.Ct. 2748, 453 U.S. 247, 69 L.Ed.2d 616. Purpose of § 1983 is to provide a remedy to parties deprived of constitutional rights by a state official's abuse of his position while acting under color of state law. *Haines v. Fisher*, C.A.10 (Wyo.) 1996, 82 F.3d 1503. Seeking an injunction and financial damages against judicial and non-judicial defendants for great and irreparable personal and financial harm. These federal offenses include repeated violations of record numbers of state and federal substantive and procedural due process laws and constitutional protections, perpetrated under color of state law, while lacking personal jurisdiction.

28 U.S.C.A. § 1443

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

This section providing for removal of civil rights action from state court to federal district court only applies to

removal of action originally instituted in state court. *Boyce v. School Dist. of Philadelphia*, E.D.Pa.1978, 447 F.Supp. 357.

28 USCA § 1343

a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Federal district court had jurisdiction, under this section establishing original jurisdiction in district courts of any civil action to redress deprivation of any constitutional right under color of state law, to grant monetary and equitable relief requested, regardless of amount in controversy. *Lopez v. White Plains Housing Authority*, S.D.N.Y.1972, 355 F.Supp. 1016. Federal courts have jurisdiction to hear claims of alleged deprivations of procedural due process rights. *Johnston v. Shaw*, N.D.Tex.1982, 556 F.Supp. 406. The right to due process of law was guaranteed not only to citizens but to any person, and the remedy for deprivation of such right was provided by former § 41(14) of this title, and jurisdiction over the enforcement of such rights was given the federal

district courts by said section. *United Elec., Radio & Mach. Workers of America, CIO, v. Baldwin*, D.C.Conn.1946, 67 F.Supp. 235. Civil rights statute and its jurisdictional counterpart authorize federal courts to entertain suits to redress deprivations, under color of state law, of constitutional rights. *Hagans v. Lavine*, U.S.N.Y.1974, 94 S.Ct. 1372, 415 U.S. 528, 39 L.Ed.2d 577, on remand 505 F.2d 727. Right to present a defense is one of minimum essentials of fair trial. *U.S. v. Burge*, C.A.6 (Mich.) 1992, 990 F.2d 244, certiorari denied 113 S.Ct. 2379, 508 U.S. 924, 124 L.Ed.2d 283. Fundamental element of due process of law is right of defendant to present defense. *Purohit v. State*, Md.App.1994, 638 A.2d 1206, 99 Md.App. 566, certiorari denied 646 A.2d 364, 335 Md. 698.

28 U.S.C.A. § 1441

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . .

Acts of Congress authorizing the removal of causes are constitutional. *Home Life Ins. Co. of Brooklyn v. Dunn*, U.S.Ohio 1873, 86 U.S. 214, 22 L.Ed. 68, 19 Wall. 214. *See, also, Ames v. Kansas*, Kan. 1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 482; *Fisk v. Union Pac. R. Co.*, C.C.N.Y.1869, Fed.Cas. No. 4,827. The Supreme Court by uniformly construing provisions of former §71 of this title authorizing federal court by necessary implication had held such provision to be constitutional. *Texas Emp. Ins. Assn' v. Felt*, C.C.A.5 (Tex.)1945, 150 F.2d 227. Federal law governs construction of removal statutes. *Jones v. Roadway Exp., Inc.*, C.A.5 (Tex.) 1991, 931 F.2d 1086. Whether a civil action is removable and has properly removed is one for consideration

of the federal court and is not controlled by state law. *Stoll v. Hawkeye Cas. Co. of Des Moines*, Ipwa, C.A.8 (S.D.) 1950, 185 F.2d 96.

District court granted plaintiff's motion to remand by relying on the following:

> *"The plaintiff's complaint asserted five causes of action, all of which are firmly grounded in state law. The complaint did not raise a federal question which would grant original subject matter jurisdiction to this court. (see page 5, ¶ 2, line 9 of order granting the plaintiff's motion to remand)"* Federal courts should not look to state court classifications of parties or characterization of actions in determining whether removal is proper under federal law. *Ford Motors Credit Co. v. Liles*, W.D.Okla. 1975, 399 F.Supp. 1282. Questions concerning removal of cases to federal court are to be resolved in light of federal law. *Prini Corp. v. Orion Ins. Co.*, E.D.Cal.1971, 331 F.Supp. 453.

WHEN A PLAINTIFF BY A VOLUNTARY ACT INTERPOSES A FEDERAL QUESTION THAT *DID NOT* APPEAR IN THE COMPLAINT AS ORIGINALLY FILED, THE DEFENDANT MAY REMOVE THE CASE TO FEDERAL COURT. *Federal Deposit Ins. V. Otero*, C.A.1 (Puerto Rico) 1979, 598 F.2d 627; 28 U.S.C.A. § 1146(b). If case becomes removable during or even near end of state court trial, defendant may still exercise his rights to remove to federal court. *Johnson v. Celotex.*, D.Md. 1988. 701 F.Supp. 553.

35. Plaintiff's attorneys, Prenovost, Normandin, Bergh & Dawe, through Thomas J. Prenovost, Jr. and Gregory S. Masler, counselors at law, for the benefit of plaintiff and disregard of defendant's constitutional rights under due process and civil right acts, during state judicial process have committed illegal acts by coaching witness and soliciting perjury, acts contrary

> to the ethical and professional conducts that plaintiff's attorneys owe defendant. In addition state judge, the co-conspirator, who was made aware of those despicable acts, chose to do nothing, but rather impede justice and abused his authorities to punish the defendant by making illegal rulings on matters that were judicially and appropriately taken off-calendar and also, in the absent of the appellant, ruled on subjects that were not made motion properly to give the defendant an opportunity to oppose and to be heard. If the federal court did not have original jurisdiction over the subject matter as district judge contends, the federal court inherited such right by the wrongful actions of the plaintiff's attorneys, the state judge, and other third parties during the state judicial process. Civil rights statute and its jurisdictional counterpart authorize federal courts to entertain suits to redress deprivations, under color of state law, of constitutional rights. *Hagans v. Lavine*, U.S.N.Y.1974, 94 S.Ct. 1372, 415 U.S. 528, 39 L.Ed.2d 577, on remand 505 F.2d 727. Jurisdiction of claim against county officials for conspiring to deprive plaintiff of fair trial and due process of law was correctly asserted under this section conferring upon federal district courts original jurisdiction of certain civil rights actions. *Cross v. Board of Sup'rs of San Mateo County*, N.D.Cal.1968, 326 F.Supp. 634, affirmed 442 F.2d 362.

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law

for the resolution of disputes and a highly visible member of government under the rule of law.

CA ST JUDICIAL ETHICS Canon 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code. Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law. The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making, and this Code should be read and interpreted with that function in mind. Although canons of code of judicial conduct do not have force of law or regulation, they reflect judicial consensus regarding appropriate behavior for judges and failure of judge to comply with canons suggests performance below minimum level necessary to maintain public confidence in administration of justice. *Adams v. Commission on Judicial Performance* (1994) 34 Cal.Rptr.2d 641, 8 Cal.4th 630, 882 P.2d 358.

CA ST JUDICIAL ETHICS Canon 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY!

A. Judicial Duties in General. All of the judicial duties prescribed by law shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities (1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified. Protection against any actual prejudice arising out of conduct by trial judge of preliminary hearing lies in utilization of existing means of challenging perceived bias or other lack of fairness of trial judge; judge who feels he or she is biased has obligation not to preside over proceedings, and if counsel conclude trial judge is for any reason biased, they may avail themselves of remedies for disqualification of judges. *People v. DeJesus* (App. 2 Dist. 1995) 44 Cal.Rptr.2d 796, 38 Cal.App.4th 1, rehearing denied, review denied.

CALIFORNIA CODE OF CIVIL PROCEDURE §170.6

(2) Where the judge, other than a judge assigned to the case for all purposes, court *commissioner*, or referee assigned to or who is scheduled to try the case or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date.

Defendant has judicially and timely complied with every procedure to protect, enforce, and to prosecute and to defend his judicially guaranteed *rights* to a fair trial. The court and its officials have made every effort to deny defendant of his constitutional rights under California and The United States Laws and in violation of his civil rights and violation of due process and for bogus cause and in retaliation and to

intimidate him from enforcing his guaranteed rights to a fair trial.

District court in an effort to impede justice, only after two days of filing of petitioner's counterclaim remanded action to state court where a corrupt judge, Alan G, Buckner will get to rule on his own defense as he has done over and over and over. A judge protecting another one in the name of justice, fairness and judicial performance! So when is the petitioner going to get a fair shake of the American Legal System?

ARGUMENT FOR GRANTING THE WRIT

The review of the lower court's final decision in Supreme Court of the United States is not a matter of right but of judicial discretion. This cannot be said about Ninth Circuit Court of Appeal. The ninth circuit cannot choose and pick its own cases. Ninth Circuit cannot easily by citing its own case laws try to get out of its judicial responsibilities. Every appeal that is filed in the ninth circuit court must be given the same degree of importance and attention. The ninth circuit court of appeals refused to provide petitioner the due process right to file appeal briefs. In its ruling appellate court stated that it *". . . .lacks jurisdiction over this appeal"*. By its acts, ninth circuit approved the obstruction of justice committed by the district court. These corrupt acts only assisted plaintiff, its scandalous attorneys and their agents and the corrupt state court judge.

Where one court determines that plaintiff's well pleaded complaint did not have any federal questions, another decides not to look at the merit of the case and dismisses it without any justification. On the other hand defendant contends that plaintiff and other third parties associated with them by their own actions have created a federal question which would make a state court transferable to federal jurisdiction. The conduct of the process server, the solicitation of perjury of plaintiff's attorneys, the judge of state court misconducts and

favoring plaintiff over defendant for being of different class of citizen, or color of skin and nationality who happens to represent himself in this proceedings all of those amounts to violation of due process of law and civil rights under the United States Constitution. This court must remember the following while looking at the events in this action: WHEN A PLAINTIFF BY A VOLUNTARY ACT INTERPOSES A FEDERAL QUESTION THAT *DID NOT* APPEAR IN THE COMPLAINT AS ORIGINALLY FILED, THE DEFENDANT MAY REMOVE THE CASE TO FEDERAL COURT. *Federal Deposit Ins. V. Otero*, C.A.1 (Puerto Rico) 1979, 598 F.2d 627; 28 U.S.C.A. § 1146(b). If case becomes removable during or even near end of state court trial, defendant may still exercise his rights to remove to federal court. *Johnson v. Celotex., D.Md.* 1988. 701 F.Supp. 553.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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April 28, 2004

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed February 24, 2000]

Nos. 04-55015
CV-03-08771-AHM

WFS FINANCIAL SERVICES, INC,
Plaintiff-Appellee,

v.

MIKAIL KHASHAN,
Defendant-Appellant.

ORDER

Before: FERNANDEZ, W. FLETCHER and TALLMAN, *Circuit Judges*.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not reviewable. *See* 28 U.S.C. § 447(d); *Kunziv. Pan American World Airway, Inc.*, 833 F.2d 1291 (9th Cir. 987) (order remanding for lack of federal jurisdiction is not reviewable), Consequently, this appeal is dismissed for lack of jurisdiction.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed March 30, 2004]

Nos. 04-55015
CV-03-08771-AHM

WFS FINANCIAL SERVICES, INC,
Plaintiff-Appellee,

v.

MIKAIL KHASHAN,
Defendant-Appellant.

ORDER

Before: FERNANDEZ, W. FLETCHER and TALLMAN, *Circuit Judges*.

Appellant's motion for reconsideration of this court's February 24, 2004, order dismissing this appeal for lack of jurisdiction is denied.

No motion for reconsideration, rehearing, clarification, stay of mandate, or any other submissions shall be entertained in this closed docket.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed December 5, 2003]

NO.: CV-03-8771 AHM

WFS FINANCIAL SERVICES, INC,
Plaintiff,

v.

MIKAIL KHASHAN,
Defendant, Appellant.

ORDER REMANDING CASE TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

FACTUAL BACKGROUND

On August 18, 2000, Mikail Khashan ("defendant") entered into a contract with Jim Allen Motors for the purchase of a BMW. Pursuant to the contract, Defendant agreed to pay for the vehicle by making monthly payments. Jim Allen Motors subsequently assigned its rights under the contract to WFS Financial Services, Inc. ("Plaintiff"). On or about January 14, 200 l, Plaintiff defaulted on his payments. On February 21, 2002, Plaintiff filed suit against Defendant in Los Angeles Superior Court. The Complaint alleged five causes of action under California law: (1) breach of contract; (2) common count; (3) claim and delivery; (4) conversion; and (5) possession of personal property. On December 2, 2003, Defendant filed a Notice of Removal, removing the case to this Court based on counterclaims and third-party claims arising under federal law. Specifically, Defendant asserted counterclaims against Plaintiff for violations of 11 U.S.C. §727, 15 U.S.C. § 1601 and 15 U.S.C. § 1692.

Defendant also asserted third-party claims against Plaintiff's lawyers, Thomas Prenovost and Gregory Masler, Plaintiff's law firm, Prenovost, Normandin, Bergh & Dawe, Jim Allen Motors, Judge Alan G. Buckner, process server Delbert Salgado and Sano Attorney Services for violations of 18 U.S.C. § 1961,42 U.S.C. §1983, 11 U.S.C. § 727 and 15 U.S.C. § 1601.

ANALYSIS

A federal court must determine its own jurisdiction even if neither party objects to it. *Rains* v. *Criterion Systems, Inc.*, 80 F.3d 339 (9th Cir. 1996). A defendant may remove a civil case to federal court if the case could have originally been commenced in federal court, subject to a few exceptions not applicable here. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998). A federal court has original jurisdiction "where the matter in controversy exceeds the sum or value of $75,000. . . and is between. . . citizens of different States." 28 U.S.C. § 1332(a). A federal court also has original jurisdiction over claims "arising under" federal law. 28 U.S.C. § 1331.

Defendant concedes that removal jurisdiction is not based on diversity. *See Def's Statement Concerning Removal* ¶ 2. Therefore, the only basis for removal jurisdiction is the presence of a federal question. However, federal question jurisdiction is determined from the face of the complaint and cannot be based on a federal law asserted for the first time in a counterclaim, cross-claim or third-party claim. *Caterpillar, Inc. v. Williams*, 482 U.S. 386? 392 (1987); *Metro Ford Truck Sales. Inc. v. Ford Motor Co.*, 145 F.3d 320, 327 (5th Cir. 1998).

In this case, the Complaint states causes of action arising exclusively under California law; the Complaint does not assert any claims arising under federal law. The fact that Defendant's counterclaims and third-party claims are based

on alleged violations of federal law is not sufficient to confer federal question jurisdiction and thus there is no proper basis for removal, Id. Accordingly) the Court REMANDS this case to the Superior Court of the State of California, County of Los Angeles,

IT IS SO ORDERED.

DATE: December, 2003.

A. HOWARD MATZ
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[December 18, 2003]

NO.: CV-03-8771 AHM

WFS FINANCIAL SERVICES, INC,
Plaintiff,

v.

MIKAIL KHASHAN,
Defendant, Appellant.

ORDER DENYING "REQUEST FOR RECONSIDERATION" AND CONDITIONALLY ORDERING DEFENDANT TO SHOW CAUSE

REQUEST FOR RECONSIDERATION

On December 4, 2003 the Court issued an Order remanding this case to state court. Defendant has sought-reconsideration. The request is DENIED as utterly without merit.

ORDER TO SHOW CAUSE

On December 17,2003 defendant Mikail Khashan ("Khashan") filed a "Request for Reconsideration" in which he asserted:

"From the language and the face of the [Court's] order it is apparent, evident and obvious that the above court or any staff member of the court or someone affiliated with this court has engaged itself in chamber, back room or closed door conversation and negotiation with plaintiff or a member of plaintiff's attorneys, or a party named as counter-defendant, or anyone associated or affiliated with plaintiff, or

a former or present state or federal judge, or someone in any capacity and in the absence of the defendant and without his knowledge and consent."

Khashan then purported to "DEMAND" that this court answer 10 questions that explicitly challenge the court's integrity and impartiality. By filing these demands,

Khashan has appeared to engage in all of the following:

(1) Unreasonable and vexatious multiplication of this proceeding. 28 U.S.C. §1927.

(2) Presenting a paper—in essence, a motion—for such improper purposes as to harass and cause unnecessary delay and needless increase in the cost of litigation. Fed.R.Civ.P.11{b).

(3) Willfully acting in bad faith, motivated by vindictiveness, obduracy and the improper purpose of venting his anger by attacking the very integrity of the court.

Unless by December 24, 2003. Khashan signs and files a declaration apologizing for filing his contemptuous "Demand" he is ORDERED TO SHOW CAUSE in writing, and by not later than January 5, 2004, why he should not be sanctioned in the amount of $1,000 pursuant to the Court's inherent authority and its powers under 28 U.S.C. § 1927 and Rule 11.

IT IS SO ORDERED

A. HOWARD MATZ
United States District Judge

MIKAIL KHASHAN
11862 BALBOA BLVD. #190
GRANADA HILLS CA 91344
Counter-claimant

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Filed December 3, 2003]

Case No.: CV-03-08771 AHM

Counter-claim for

1. 18 U.S.C. §1962 RICO ACT;
2. 42 U.S.C. §1983 CIVIL RIGHTS VIOLATION;
3. VIOLATION OF 15 U.S.C. § 1692;
4. VIOLATION OF 15 U.S.C § 1601;
5. VIOLATION OF 11 U.S.C § 727;
6. DEFEMATION;
7. SOLICITATION OF PERJURY;
8. FRAUD.

COUNTERCLAIM

COMES NOW, the defendant and counterclaimant, Mikail Khashan, for its counterclaim shows the Court as follows:

PRELIMINARY ALLEGATIONS

Counterclaimant, KHASHAN, is an individual and alleges the matters set out in this counterclaim on information and belief except for those allegations that pertain to defendant which are based on personal knowledge.

Defendant is an individual residing within the City of Los Angeles, County of Los Angeles State of California. Each of the counter-defendants were aware of the facts of the other defendants in support of illegal acts of the enterprise and each counter-defendant is culpable of the acts of misprision of a felony by the other counter-defendants and party's to the actions stated herein. None of the counter-defendants have signed the oath of the office and are thus without jurisdiction.

The court system is an enterprise and judges are not cloaked with immunity when acting out of personal vindictiveness. *Harper v. Merckle*, 638 F.2d 848, 859 (5th Cir.1981): When a judge has acted out of personal motivations and has used his judicial office as an offensive weapon to vindicate personal objectives, these non-judicial acts, are not cloaked with judicial immunity from suit under Section 1983.

Counter-defendant ALAN G. BUCJNER ("BUCKNER") is and was a resident of the State of California, and is and was a judge of the Superior Court for the County of Los Angeles during all times pertinent herein he acted under color of that capacity and all acts complained of were in furtherance of the conspiracy alleged and was intended to and did constitute precatory acts of racketeering and intended to and did cause counterclaimant's damages. Cross-defendant WFS FINANCIAL SERVICES, INC. ("WFS") is a California Corporation that engages in financing automobiles and other related services in the County of Los Angeles.

Cross-defendant PRENOVOST, NORMANDIN, BERGH & DAWE ("THE FIRM") is a California Corporation that is engaged in practice of law with offices in the County of Los Angeles. At the time of this action, THE FIRM was the attorney representing cross-defendant WFS.

Counter-defendant GREGORY S. MASSLER ("MASSLER") is and was a resident of the State of California, and is and was an attorney at law and an officer of the Superior Court for the County of Los Angeles and employed by THE FIRM during all times pertinent herein he acted under color of that capacity and all acts complained of were in furtherance of the conspiracy alleged and was intended to and did constitute precatory acts of racketeering and intended to and did cause counterclaimant's damages.

Counter-defendant THOMAS J. PRENOVOST ("PRENOVOST") is and was a resident of the State of California, and is and was an attorney at law and an officer of the Superior Court for the County of Los Angeles and employed by THE FIRM during all times pertinent herein he acted under color of that capacity and all acts complained of were in furtherance of the conspiracy alleged and was intended to and did constitute precatory acts of racketeering and intended to and did cause counterclaimant's damages.

Cross-defendant JIM ALLEN MOTORS ("JIM ALLEN") is an unknown business which is engaged in sell or financing of automobiles in the State of California during all times pertinent herein he acted under color of that capacity and all acts complained of were in furtherance of the conspiracy alleged and was intended to and did constitute precatory acts of racketeering and intended to and did cause counterclaimant's damages.

Cross-defendant SANO ATTORNEY SERVICES ("SANO") is a California business and is engaged in process serving, and other related services in the County of Los Angeles, while in the course of its employment with THE FIRM during all times pertinent herein they acted under color of that capacity and all acts complained of were in furtherance of the conspiracy alleged and was intended to and did constitute precatory acts of racketeering and intended to and did cause counterclaimant's damages.

Cross-defendant DELBERT SALGADO ("SALGADO") is an individual who is and was engaged in business of process serving, and other related services in the County of Los Angeles, while in the course of his employment with SANO during all times pertinent herein he acted under color of that capacity and all acts complained of were in furtherance of the conspiracy alleged and was intended to and did constitute precatory acts of racketeering and intended to and did cause counterclaimant's damages.

This court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 in that this counterclaim arises under the laws of the United States.

Defendant is subject to jurisdiction of this court and venue lies with this court pursuant to 28 U.S.C. §139(b).

This court has pendent jurisdiction over those claims asserted herein that arise under the laws of the State of California.

Each of the counter-defendants sued herein was in some manner responsible for the actions which form the basis for this counterclaim as set forth, herein below.

Counterclaimant is informed and believe, and thereon allege, that at all times herein relevant, each of the counter-defendants was the agent and/or employee of the remaining counter-defendants, and at all times were acting within the purpose, furtherance, and scope of said agency and/or employment.

On July 15, 2000, Counterclaimant purchased a 1998 BMW 740IL, from EURO AMERICA MOTORS ("EURO") in City of Santa Monica.

At the time counterclaimant signs the agreement with EURO, he agreed to purchase the vehicle for the cash value of $34,500.00. KHASHAN then gave $6,000.00 down payment to EURO. Furthermore, counterclaimant further agreed to make a monthly payment of $796.88 for the terms of 48 months or four (4) years.

On or about March 22, 2001, counterclaimant filed for relief under Chapter 7 Bankruptcy pursuant to 11 U.S.C. § 727.

On or about August 22, 2001, KHASHAN'S was discharged against all his debtors including WFS.

On or about December 15, 2001, counterclaimant's chapter 7 bankruptcy case was closed by the order of Bankruptcy Judge, Honorable Kathleen Lax.

On February 27, 2002, WFS filed a complaint in the Superior Court for the State of California, County of Los Angeles case # BC268963. WFS alleges that KHASHAN for valuable consideration, made, executed and delivered to JIM ALLEN MOTORS a written Motor Vehicle Contract and Security Agreement. WFS claims that KHASHAN defaulted in the terms, conditions and covenant of the Contract by failing and refusing to make the monthly payment then due and owing.

Process server, SALGADO, prepared an affidavit of service of process claiming that he had served counterclaimant's wife at her resident and filed such under penalty of perjury with the state court on or about April 30, 2002.

The service of the Summons and Complaint was defective on defendant and was not in compliance with *California Civil Procedure* §416.60 through §416.90.

Counterclaimant timely filed a Motion to Quash Service of Summons ("THE MOTION") on May 13, 2002.

SALGADO with the assistance of WFS's attorneys (MASSLER, and PRENOVOST) and for their own benefit solicited perjury by knowingly preparing false, illegal and fraudulent affidavit under penalty of perjury entitled Declaration of Delbert Salgado In Support of Plaintiff's Opposition to Defendant's Motion To Quash Service of Summons . . . with intent to deceit and mislead the state court and counterclaimant.

On June 13, 2002, THE MOTION came before Judge BUCKNER, who after listening to arguments agreed with counterclaimant that process server SALGADO was dishonest in his conducts but denied the motion without legal justification and for bad cause.

On June 21, 2002, Counterclaimant timely filed a Notice of Appeal and Notice of Election to Proceed, with the Appellate Court, Second Appellate District, pursuant to California Rules of Court, Rule 5.1.

On July 31, 2002, counterclaimant filed his Case Information Statement and all supporting documents including a *Conformed Copy of Notice of Ruling* with the State Appellate Court.

Counterclaimant's Case Information Statement was rejected by the Appellate Court for failure to attach an *"Order Appealing"* signed by state court judge, BUCKNER.

Counterclaimant, on August 9, 2002, requested BUCKNER for a signed order denying THE MOTION in an effort to satisfy and complete Appellate Court's requirements.

BUCKNER, in an attempt to prevent counterclaimant from having his day before the Appellate Court, in an effort to delay and dismiss counterclaimant's appeal process, and in retaliation and abuse of his authority in a letter to counterclaimant refused to sign the order justifying his own ruling for denying counterclaimant's motion to quash service of summons.

On July 31, 2002, counterclaimant's appeal was dismissed for failure to complete Case Information Statement.

On July 12, 2002, counterclaimant timely filed a Motion for an Order for Change of Venue ("VENUE MOTION"). The hearing was scheduled by the state court clerk for September 12, 2002, to be heard before Honorable Gary Klausner in Department "1" of the Los Angeles Superior Court.

BUCKNER in retaliation and an attempt to keep the matter in his jurisdiction ordered the counterclaimant to reschedule the hearing for September 5, 2002, in department "14". Counterclaimant filed Notice of Continuance of Hearing in compliance with the court order, on August 1, 2002.

On July 27, 2002, pursuant to *California Rules of Court*, Rule 303, counterclaimant timely and appropriately withdrew his VENUE MOTION and replaced it with a Motion for an Order to Transfer Action from Central District to San Fernando District where defendant resides (TRANSFER MOTION"), another polite way to inform BUCKNER to stop his retaliatory techniques and to cease his personal vendetta against counterclaimant.

On September 7, 2002, counterclaimant received a Notice of Ruling, regarding previously withdrawn and off calendared VENUE MOTION. BUCKNER had continued previously withdrawn motion and made ruling in counterclaimant's absence denying his VENUE MOTION. BUCKNER additionally made other rulings in the matter that was neither appropriately nor judicially scheduled for hearing.

Counterclaimant making every effort to have his case heard before any judge other than BUCKNER, having become frustrated of judge's retaliatory techniques, and abuse of his authority, filed a declaration of prejudice pursuant to *California Civil Procedure* §170.6, on September 10, 2002. Concurrently, counterclaimant filed a Demand for Hearing for Disqualification of BUCKNER in accordance with *California Civil procedure* §170.3(4)(c)(1).

On or about September 29, 2002, counterclaimant received three (3) Orders signed personally by BUCKNER Striking counterclaimant's every motion. BUCKNER made these rulings out of spite and animosity toward counterclaimant and in furtherance of the judicial conspiracy against counterclaimant.

VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT,

18 U.S.C. § 1961, *et seq.*

(Against BUCKNER, MASSLER, PRENOVOST AND SALGADO)

This court arises under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*

The Counter-Defendants were an enterprise within the meaning of 18 U.S.C. § 196(4) which is a "person" within the meaning of 18 U.S.C. § 196(3).

The counter-defendants were an enterprise within the meaning of 18 U.S.C. § 196(4) which is engaged in, or the activities of which affect, interstate or foreign commerce by virtue of the positions held whereby decisions made provide a benefit, revenue, and income to parties involved in litigation appearing before them.

The acts of the individual counter-defendants as set forth in herein in detail repeated violations of both Federal and State law. Therefore, these activities constitute a further component of a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961 AND (State Corruption Activities Act).

The acts of the individual counter-defendants as set forth herein constitute repeated and continuing conduct that was neither isolated nor sporadic, but that involved a callus disregard for the law that has evolved gradually over the years.

The acts of the individual counter-defendants as set forth herein demonstrate that said counter-defendants at all times pertinent, and to the present, are conducting or participating in, directly or indirectly, the affairs of a continuing criminal enterprise, which enterprise is engaged in or affecting interstate commerce under 18 U.S.C. § 1961, through a pattern of racketeering activity, as alleged and described fully herein through telephone communications and the U.S. Postal Service.

VIOLATION OF CIVIL RIGHTS

UNDER 42 U.S.C. § 1983, *et seq.*

(Against BUCKNER, MASSLER, AND PRENOVOST)

The forgoing acts were done in derogation of counterclaimant rights as enumerated and guaranteed in 42 U.S.C. § 1983.

The outrageous conducts set forth hereinabove were undertaken without concern for the foreseeable impact same would have on counterclaimant.

(VIOLATION OF 15 U.S.C. § 1692)

(Against WFS)

The counter-defendants, are seeking to collect the purported debts, have called counterclaimant on unlisted telephone in violation of his right to privacy as guaranteed by the United States Constitution and repeatedly made calls at inconvenient times, and continuing their harassing efforts even after plaintiff notified them in writing that he contested the subject alleged discharged debts and to leave him alone.

Counter-defendants provided their debt collectors and other third parties the number to counterclaimant unlisted telephone. Counter-defendants have called counterclaimant at unusual time on his unlisted telephone number and harassed him even after they were informed not to call, in express derogation of his constitutionally guaranteed right to privacy.

(VIOLATION OF 11 U.S.C § 727)

(Against WFS AND THE FIRM)

The forgoing acts were done in derogation of counterclaimant's rights as enumerated and guaranteed in 11 U.S.C. § 727.

The discharge debts prohibit any attempt to collect from the debtor a debt that has been discharged. A creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor.

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed whether the debt was included in the schedules or omitted from them.

Counter-defendants knew of the filing of chapter 7 bankruptcy and therefore, should have known that all debts incurred prior, and during the bankruptcy proceedings were discharged. Counter-defendants continued legal action and continued to harass, annoy, demand, retaliate, ridicule, make false reports and threatened the counterclaimant by damaging his good name and credit worthiness.

VIOLATION OF 15 U.S.C. § 1601

(Against WFS, MASSLER, PRENOVOST AND THE FIRM))

The forgoing acts were done in derogation of plaintiff's rights as enumerated and guaranteed in 15 U.S.C. § 1601.

The conduct of cross-defendants has caused cross-complainant to suffer extreme emotional distress.

(DEFAMATION)

(Against WFS AND JIM ALLEN)

At all times herein relevant, counter-defendants, were the agent and/or employee of the remaining counter-defendants, and at all times were acting within the purpose, furtherance, and scope of said agency and/or employment.

Counter-defendants, WFS and JIM ALLEN, on several occasions and continuing until and at least December 1, 2003, repeated their untrue version of events surrounding the purchased and financing of the 1998 BMW 740IL, as set forth above.

Counter-defendant WFS through its attorneys and through their agents and representatives, have acted on these untrue allegations, without probable cause to do so and without investigation the truthfulness or falsity of the allegations and have filed a civil complaint against counterclaimant and have republished to third parties including all Credit Reporting Agencies, a discharged debt in violation of 11 U.S.C. § 727.

The conduct of counter-defendants was intentional, reckless and negligent which maliciously reported and duplicated report of the discharged debt. Therefore, counter-complainant seeks the imposition of punitive and exemplary damages against such counter-defendants.

SOLICITATION OF PERJURY

(Against All Cross-defendants)

On April 30, 2003, SALGADO, the process server, filed an affidavit of proof of service under penalty of perjury claiming that he had served cross-complainant' wife at her resident.

The truth is that SALGADO spoke to cross-complainant's sister who refused to speak with him since he would not properly identify himself. SALGADO, then dropped a copy of state summons and complaint on cross-complainant's doorstep and never delivered KHASHAN's sister with a copy thereof.

Cross-complainant then filed a motion to quash service of summons challenging the truthfulness and validity of the service of summons.

Cross-defendant WFS, through its attorneys, MASSLER, PRENOVOST and THE FIRM, coached, trained and solicited perjury so SALGADO would prepare another affidavit in support of WFS's Opposition to Motion to Quash Service of Summons.

In his second affidavit, SALGADO, had willfully modified and altered the contents of his affidavit to fit WFS and its legal teams' scam to deceit, defraud and to manipulate the court, the counter-claimant and the judicial process.

Cross-defendant, BUCKNER knew of those conducts of the other counter-defendants and he did nothing but supported their malignant scam by denying cross-complaint's motion to quash.

Cross-defendant SALGADO knowingly and willfully falsified documents in which he knew they were not accurate. Cross-defendants MASSLER and PRENOVOST as attorneys and court officer knew that that conducts of SALGADO were willful and malicious.

Cross-defendants MASSLER and PRENOVOST knew that their conducts in coaching and training SALGADO to lie and to file a false and fraudulent affidavit was a violation of State, Federal laws and against the Canon of Ethical and Professional Conducts.

The actions of these counter-defendants were willful, malicious, and oppressive, and entitle counter-complainants to an award of punitive and exemplary damages to punish these counter-defendants, to make an example of them, and to deter such conduct.

FRAUD

(Against All Counter-defendants)

All counter-defendants knew or should have known that their conducts and actions were contrary to the laws of this state. The outrageous conduct set forth hereinabove was

undertaken without concerns for the foreseeable impact same would have on cross-complainant.

The conduct of all counter-defendants, were intentional, reckless, and negligent. Therefore, cross-complainant seeks the imposition of punitive and exemplary damages against such counter-defendants.

The forgoing acts were done in derogation of cross-complainants' rights as enumerated and guaranteed in 42 U.S.C. § 1983.

WHEREFORE, defendant and counter-complainant prays for judgment against the counter-defendants and each of them as follows:

For a declaration that cross-defendant is not obligated under the subject purchase contract;

For an accounting;

For special damages in an amount according to proof;

For general damages in an amount according to proof;

For exemplary and punitive damages in an amount to be determined by the trier of fact;

For treble damages against each named counter-defendant, jointly and severally;

For all costs of suit incurred herein; and for further relief as the court may deem just and proper.

December 1, 2003.

Mikail Khashan
Counter-claimant

(2)

Supreme Court, U.S.
FILED
SEP 13 2004
OFFICE OF THE CLERK

No. 04202

IN THE

Supreme Court of the United States

MIKAIL KHASHAN,

Petitioner,

v.

NINTH CIRCUIT COURT OF APPEALS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals properly affirm, for the second time, a remand order because the order challenged in the appeal is not reviewable pursuant to *28 U.S.C. §1447(d)*?

CORPORATE DISCLOSURE STATEMENT REQUIRED BY SUPREME COURT RULE 29.6

Respondent WFS Financial, Inc. states that it is a California corporation, and has the following parent corporation: Westcorp Inc., a publicly traded company. No other publicly held company owns 10% or more of Respondent's stock.

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INTRODUCTION

The U.S. Court of Appeals for the Ninth Circuit denied, for a second time, Petitioner Mikail Khashan's appeal of a remand order for lack of jurisdiction pursuant to *28 U.S.C. §1447(d)*. Petitioner then petitioned for a writ of certiorari before this Court. The petition is without merit and should be denied.

This matter originally started out as a replevin action in the Superior Court for the County of Los Angeles, State of California, for breach of a retail installment sales contract secured by 1998 BMW, purchased by Petitioner, a California resident. Respondent WFS Financial, Inc., a California corporation, is the holder of the contract.

On the eve of trial, December 3, 2003, Petitioner removed the action for a second time to United States District Court for the Central District of California. The District Court remanded the matter back to Superior Court and Petitioner appealed to the United States Court of Appeals for the Ninth Circuit, who affirmed the remand order. Petitioner then filed this petition for writ of certiorari. Petitioner is a paralegal who has abused the judicial system; this petition is nothing more than a delay tactic and should be denied.

STATEMENT OF THE CASE

On August 18, 2000, Petitioner purchased a BMW from Jim Allen Motors, and executed a written Motor Vehicle Contract and Security Agreement ("the Contract"). Jim Allen Motors assigned the Contract to Respondent who regu

larly purchases vehicle sale contracts throughout the state of California. Respondent perfected its lien on the BMW through the California Department of Motor Vehicles, and is named on the Certificate of Title for the Vehicle as lien holder of record. Petitioner made several payments, but then defaulted on his January 2001, payment.

On March 22, 2001, Petitioner filed for Chapter 7, bankruptcy protection, Case No. 01-121577 and on December 17, 2001, his debts were discharged. However, Respondent' lien on the BMW remained.

On April 26, 2001, Respondent obtained relief from the bankruptcy automatic stay to enforce its remedies to repossess or otherwise obtain possession and dispose of the BMW.

On February 27, 2002 Respondent filed in the California Superior Court for the County of Los Angles its complaint for breach of contract, common count, claim and delivery, conversion and possession of personal property, Case No. BC268963.

Petitioner filed a motion to quash service of the Summons and Complaint claiming the complaint was served on his sister and not him. The Superior Court denied Petitioner's motion to quash. Petitioner later appealed the denial of his motion to quash to the California Court of Appeal for the Second District. The Appellate Court dismissed Petitioner's appeal for failure to file a Case Information Statement (Local Rule 6).

On October 22, 2002, Petitioner filed an Answer to Respondent's complaint with the United States District Court for the Central District of California, which had the effect of removing the action to federal court.

On November 6, 2002, Respondent filed a motion to remand the proceeding back to state court.

On December 6, 2002 the District Court granted Respondent's motion to remand.

Not unexpectedly, on December 13, 2002 Petitioner filed a Notice of Appeal of the first remand order to the United States Court of Appeals for the Ninth Circuit. On June 20, 2003 the Ninth Circuit affirmed the District Court's Remand Order and after the passage of some time, the matter was remanded back to the Los Angeles Superior Court.

On some unknown date in 2003, Petitioner filed an "Emergency Motion for Stay of Mandate Pending Application for Certiorari" which was denied by the Ninth Circuit on November 18, 2003.

On September 16, 2003, the Superior Court overruled Petitioner's demurrer and motion to strike portions of Respondent's complaint and set the matter for trial on December 5, 2003.

On December 3, 2003, two days before trial, Petitioner filed a second "Notice of Removal to Federal District Court".

On December 4, 2003, the District Court issued a second remand Order directing that the above captioned matter again be returned to Superior Court.

Petitioner then filed a Motion for Reconsideration which was denied on December 18, 2003. In its Order, the District Court also set a December 24, 2003 deadline for Petitioner to apologize to the court for, *inter alia*, suggesting the District Court was communicating with Respondent and/or Respondent's attorney and/or Superior Court Judge Buckner without Petitioner being present.

On December 24, 2003, after the remand Order had been entered, Respondent filed a demand for recusal of Judge A. Howard Matz. Respondent also filed a declaration that, in essence, complied with the District Court's December 28, 2003 Order.

On January 12, 2004, Judge Margaret M. Morrow denied Respondent's motion to disqualify Judge A. Howard Matz.

On February 24, 2004, the United States Court of Appeal for the Ninth Circuit dismissed Respondent's appeal for lack of jurisdiction.

On March 30, 2004, the United States Court of Appeal for the Ninth Circuit denied Respondent's motion for reconsideration of its February 24, 2004, order.

On some unknown date, Respondent petitioned the United States Supreme Court for a writ of certiorari.

REASONS FOR DENYING THE PETITION

1. The Court of Appeal Properly Affirmed the District Court's Remand Order Because a Remand Order is Not Reviewable.

The Court of Appeals was without jurisdiction to hear the appeal of the District Court's December 4, 2003 Order remanding the matter to Superior Court. *28 U.S.C. §1447*; and *Kunzi v. Pan American World Airways, Inc.* 833 F.2d 1291 (9th Cir. 1987) [order remanding case for lack of jurisdiction is not reviewable].

2. Even if a Remand Order Was Reviewable, the District Does Not Have Jurisdiction.

Removal jurisdiction is only conferred on actions in which a federal court has original jurisdiction. *28 U.S.C. §1441(a).* Thus, actions that could not have been filed in federal court can not later be removed to federal court. Here this action can not be removed because it could not have been filed in federal court in the first place.

In order for a federal court to have jurisdiction, either originally or by removal, a well-pleaded complaint must establish that federal law creates the cause of action. *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 US 1, 27-28 (1983); and *Rivet v. Regions Bank of Louisiana*, 522 US 470, 475 (1998).

The party seeking to invoke removal jurisdiction bears the burden of supporting its jurisdictional allegations with competent proof. *Wilson v. Republic Steel Co.*, 257 US 92, 97

(1921). The Court's removal jurisdiction must be analyzed on the basis of the pleadings at the time of removal. *Sparta Surgical Corp. v. National Ass'n of Securities Dealers*, 159 F.3d 1209, 1213 (9th Cir.1998). District courts must construe the removal statutes strictly against removal and resolve any uncertainty as to removability in favor of remanding the case to state court. *Takeda v. Northwestern Nat'l. Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir.1985).

In determining whether the case "arises under" federal law, federal courts look solely to the necessary allegations of plaintiff's complaint (*i.e.* those essential to the cause of action). *Gully v. First Nat'l Bank*, 299 US 109, 112 (1936). The "well-pleaded complaint rule" makes Plaintiff the "master of the claim" for purposes of removal jurisdiction. This means that, absent diversity, a case is only removable where a federal question is presented on the face of plaintiff's complaint. *Caterpillar Inc., v. Williams*, 482 US 386, 392 (1987).

In the instant case, Respondent is pursuing Petitioner under state law to recover its collateral after breach of a retail installment sales contract. Respondent' complaint does not allege, assert, maintain, mention, or even refer to a federal claim. Accordingly, the present action does not raise any federal issue and the District Court does not have jurisdiction.

Petitioner alleges he has several counter-claims against Respondent, Respondent' counsel, the Superior Court of California and numerous others for violating his federal rights in this matter. However, for both original and removal

jurisdiction, the federal question must be presented by plaintiff's complaint as it stands at the time of removal. Removal cannot be based on a counterclaim, cross-claim or third party claim raising a federal question, whether filed in state or federal court. Otherwise, defendants could manipulate removal jurisdiction. *Metro Ford Truck Sales Inc. v. Ford Motor Co.*, 145 F.3d 320, 327 (5th Cir. 1998). Thus, Petitioner cannot use broad, ambiguous and unfounded claims against Respondent, Respondent's counsel, the Superior Court of California and others to maneuver the present action into federal court.[1]

Petitioner argues that "when a plaintiff by a voluntary act interposes a federal question that did not appear in the complaint as originally filed, the defendant may remove the case to federal court." *Federal Deposit Ins. Corp. v. Otero*, 598 F.2d 627 (1st Cir. 1979). In *Otero*, the court held the case was removable despite the fact that the complaint did not assert federal causes of action because a federal agency, the FDIC, stepped in as party plaintiff and put in issue the federal laws governing its rights and liabilities as a creditor.

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[1] Petitioner erroneously contends that 28 U.S.C. §1653 allows him to amend the pleadings to cure defective jurisdictional allegations. Respondent's complaint does not raise a federal question and Petitioner may not manipulate the case into federal court by making frivolous and vague cross-claims or counter-claims alleging civil rights violations. "For better or worse . . . a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case rises under federal law." *Franchise Tax Board*, 463 U.S. at 11.

Consequently, the court recognized that federal law would necessarily be involved in litigation of the action. Here, Respondent is the Plaintiff and is not a federal agency. Thus, Petitioner's reliance on *Otero* is entirely misplaced.

3. 28 U.S.C.§1443 Does Not Provide Authority For Removal Jurisdiction In This Matter.

Petitioner erroneously asserts that *28 U.S.C.§1443* provides authority for removal jurisdiction in this matter.[2] However, *28 U.S.C. §1443* was enacted when state court lawsuits were being used to thwart enforcement of civil rights laws. In modern practice, removal under these provi

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[2] 28 U.S.C. §1443 provides: "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law." Removal under *28 U.S.C.§1443(2)* applies only to federal officers or persons assisting such officers in performing their duties under federal civil rights laws. *Greenwood v. Peacock*, 384 U.S. 808, 828 (1966). In the present case, removal under 28 U.S.C. §1443(2) does not apply because Respondent is not a federal officer, nor is it assisting such officers in performing their duties under federal civil rights laws.

sions is rare. *Davis v. Glanton*, 921 F.Supp. 1421, 1423-1424 (E.D. PA 1996).

In order to remove a case under *28 U.S.C. § 1443*, a two-part standard must be met. (*Id.*) First, a person must be deprived of a specific federal right pertaining to racial equality that is protected through a federal statute. *City of Greenwood v. Peacock*, 384 U.S. 808, 825-26 (1966); and, *Georgia v. Rachel*, 384 U.S. 780, 791-92 (1966). Secondly, the person must show that he will be deprived of this right in state court, either due to the existence of a state constitution or statute mandating discrimination, or alternatively because the adjudication of the claim in state court would inherently violate federal law. *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975).

Here, the state court lawsuit is not being used to defeat enforcement of civil rights laws. Respondent is simply enforcing the lien rights Petitioner granted it under a motor vehicle financing agreement. To suggest that Respondent brought this action to thwart enforcement of a civil rights law is pure fiction.

By raising due process and similar federal questions, Petitioner is merely attempting to orchestrate removal jurisdiction so as to delay trial. There is simply no federal question jurisdiction presented here.

CONCLUSION

This petition for writ of certiorari is just another step in Petitioner's effort to delay trial and convert Respondent's property rights. The Court of Appeal's affirmation of the remand order was proper. There are not any grounds for Petitioner to seek review of the Court of Appeal's decision and Respondent respectfully requests that Petitioner's petition for writ of certiorari be denied. Respondent further requests an award of just damages and double costs against Petitioner pursuant to United States Supreme Court Rules 42 and 43 as this petition for writ of certiorari is frivolous and without any basis in fact or law.

DATED: September 9, 2004

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